*** THE HONOURABLE SRI JUSTICE V. ESWARAIAH**

+ WRIT PETITION Nos.8663 OF 2006 AND 15124 OF 2007

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% DATED:07.08.2007

Toddy Tappers Cooperative Society Ltd.,
Rajarampalli Village of Velgatur Mandal,
of Pedapally Station (Regd.No.122/2005/
P&Ex./B7), Rep. by its Chief Promoter
Merugu Rajaiah @ Raja Goud, S/o. late
Pochamallu, Occ: Kalal/Tapper,
R/o. Rajarampalli Village of Velgatur
Mandal, Karimnagar District,
and another.

...PETITIONERS

Versus

The State of A.P. rep. by
The Commissioner, Prohibition &
Excise, Nampally, Hyderabad
and others.

...RESPONDENTS

! Counsel for the petitioners : Sri M.Uday Kiran
Sri C.Ramesh Sagar

^ Counsel for the respondents: G.P for Prohibition and Excise

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> Head Note:

? Cases referred:

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.8663 OF 2006 AND 15124 OF 2007

DATED:07-08-2007

W.P.No.8663 of 2006

BETWEEN

Toddy Tappers Cooperative Society Ltd.,
Rajarampalli Village of Velgatur Mandal,
of Pedapally Station (Regd.No.122/2005/
P&Ex./B7), Rep. by its Chief Promoter
Merugu Rajaiah @ Raja Goud, S/o. late
Pochamallu, Occ: Kalal/Tapper,
R/o. Rajarampalli Village of Velgatur
Mandal, Karimnagar District.

...PETITIONER

AND

The State of A.P. rep. by
The Commissioner, Prohibition &
Excise, Nampally, Hyderabad and
two others.

...RESPONDENTS

W.P.No.15124 OF 2007

BETWEEN

Toddy Tappers Cooperative Society
Endapalli (Regd.No.427) Revenue
Mandal Velgatur in Karimnagar
Distirct rep. by its President
Maddula Srinivas, S/o. Narsaiah,
Occ: Tapper, R/o. Endapalli Village,
Velgatur Mandal, Karimnagar District.

...PETITIONER

AND

The Commissioner of Prohibition
and Excise, Nampally, Hyderabad
and four others.

...RESPONDENTS

COMMON ORDER:

Heard, Mr. N. Subba Reddy, learned Senior Counsel, appearing for petitioner in W.P.No.8663 of 2006 and Mr. C. Ramesh Sagar, learned counsel, appearing for the petitioner in W.P.No.15124 of 2007 as well as the learned Government Pleader for Prohibition and Excise.

2. Petitioner, in W.P.No.8663 of 2006, Toddy Tappers Cooperative Society, Rajarampalli Village, Velgatur Mandal, Karimnagar District is hereinafter referred to as 'TCS – Rajarampalli' and the third respondent in this writ petition is writ-petitioner in W.P.No.15124 of 2007 namely Toddy Tappers Cooperative Society, Endapalli Revenue Village, Velgatur Mandal, Karimnagar District is hereinafter referred to as 'TCS – Endapalli'.

3. It is the case of TCS-Rajarampalli that Endapalli is the main revenue village and Rajarampalli is the hamlet of Endapalli revenue village but Rajarampalli is a separate Gram Panchayat, therefore, it is an independent village. There was only one society i.e. TCS-Endapalli in Endapalli village but in view of the fact that Rajarampalli is a separate Gram Panchayat, a new shop has been sanctioned at Rajarampalli village by the Commissioner of Prohibition and Excise and accordingly a new society was formed and registered by the Prohibition and Excise Superintendent, Karimnagar under the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the APCS Act') and the Rules made thereunder. But the request of TCS-Rajarampalli to grant a licence in respect of the newly sanctioned shop at Rajarampalli was illegally rejected by the Prohibition and Excise Superintendent, Pedapally

vide impugned proceedings Rc.No.217/2006/P&Ex./A3 dated 18.04.2006.

4. It is the case of TCS-Endapalli that grant of toddy shop licence in favour of TCS-Rajarampalli without disposing the objections filed on behalf of TCS-Endapalli on 17.04.2006 and 06.10.2006 is illegal, arbitrary and against the provisions of the APCS Act and the rules made thereunder.

5. The undisputed facts are that Rajarampalli village is hamlet of Endapalli main revenue village but Rajarampalli is an independent gram panchayat, therefore, Rajarampalli is also a village. There was only one society existing for TCS-Endapalli. The Government issued Excise (Toddy) Policy Guidelines for the year 2004-05 commencing from 01.10.2004 to 30.09.2005 in G.O.Ms.No.767 Revenue (Excise-II) Department dated 29.09.2004 and as per Para 8 of the said Excise Policy Guidelines as far as possible there shall be only one society for one village and one shop for one society. Splitting and bifurcation of existing Toddy Tappers Cooperative Society groups are permitted whenever warranted as per rules. Applications for grant of new Tappers Cooperative Society/Tree for Tapper shall be filed before 31.12.2004. While sanctioning the establishment of a new shop, preference shall be given to TFT. A minimum distance of 2 KMs to already existing shop shall be observed while establishing new toddy shop. A representation dated 16.12.2003 was already pending for formation for TCS-Rajarampalli and as the representation was not considered, W.P.No.5312 of 2004 filed before this Court was disposed on 22.03.2004 directing the Prohibition and Excise Superintendent, Karimnagar to pass appropriate orders for the formation of new TCS at Rajarampalli pursuant to the application/representation of Merugu Rajaiah Goud and 13 others dated 16.12.2003 in terms of the new excise policy guidelines issued in G.O.Ms.No.998 dated 01.10.2003. The said excise policy guidelines issued in G.O.Ms.No.998 dated 01.10.2003 for the year 2003-04 were adopted in the excise policy guidelines issued in G.O.Ms.No.767 dated 29.09.2004 for the year 2004-05.

6. Pursuant to the said excise policy guidelines for the year 2004-05 the application for grant of new TCS were called for to be filed before 31.12.2004 under Para 8(a). As per the instructions of the Commissioner dated 07.10.2004 the applications filed last year, which could not be considered during 2003-04, the Prohibition and Excise Superintendents were directed to process the same in the light of the excise policy guidelines for the year 2004-05 and take necessary action for grant of TCS/TFT's and there is no need for fresh applications. The said application of the tappers of Rajarampalli was considered by the District Collector (Excise), Karimnagar vide proceedings dated 14.01.2005 and recommended for sanction of establishment of new shop at Rajarampalli and accordingly the Commissioner of Prohibition & Excise vide proceedings Cr.No.563/05/CPE/E4 dated 28.01.2005 accorded sanction for establishment of new toddy shop at Rajarampalli village of Velgatur Mandal for the proposed TCS-Rajarampalli with 13 members and with the proposed annual ration of 200/200 (467) in terms of dates along with annual rental of Rs.13,543/- and the District Collector, Karimnagar was requested to notify in the District Gazette about sanction of new toddy shop at Rajarampalli.

7. Pursuant to the said orders of the Commissioner of Prohibition and Excise in Cr.No.563/05/CPE/B4 dated 28.01.2005 the Registrar of Cooperative Societies i.e. Prohibition and Excise Superintendent, Karimnagar vide proceedings in Rc.No.217/2005/P&E/B1 dated 19.02.2005 requested the Cooperative Senior Inspectors to scrutinize the registration process for the formation of new TCS at Rajarampalli with 13 members as a new shop has been sanctioned at Rajarampalli with separate ration and annual rental. Accordingly, new TCS-Rajarampalli was organized and proposals were sent to the Prohibition and Excise Superintendent, Karimnagar for registration of the society and the Registrar of Toddy Tappers Cooperative Societies, by virtue of powers conferred on him under Section 7 of the APCS Act,

the Prohibition and Excise Superintendent, Karimnagar, being the functional Registrar, registered TCS-Rajarampalli society with 13 members vide registration No.122/05/P&Ex/B7 and the registration certificate under Section 8 of the APCS Act, Registered bye-laws and list of members were also issued and the Chief Promoter of the society was directed to remit the rentals and follow the other rules and procedure for functioning of the society by order dated 25.02.2005 in proceedings Rc.No.240/2005/P&Ex/B7. The Prohibition and Excise Superintendent also appointed the committee to manage the affairs of the TCS-Rajarampalli by conducting General Body meeting in respect of the persons who have been unanimously elected by proceedings dated 25.02.2005. TCS-Rajarampalli paid the rental amount, EMD, toddy shop licence fee on 01.03.2005 vide challan Nos.92 and 93 dated 01.03.2005. Thus, it is the case of TCS-Rajarampalli that all the formalities have been fulfilled for issuance of a licence to tap trees and sell the same at Rajarampalli village.

8. While so, TCS-Endapalli filed W.P.No.2603 of 2005 stating that the representation of TCS-Endapalli dated 30.01.2005 opposing the constitution of separate TCS-Rajarampalli and sanction of toddy shop at Rajarampalli was not considered. The said writ petition was disposed by order dated 17.02.2005 directing the Commissioner of Excise and Superintendent of Prohibition and Excise to take into account and consider the representation of TCS-Endapalli dated 30.01.2005 before any permission is accorded for constitution of a separate TCS for Rajarampalli. It is the case of the TCS-Rajarampalli that the said writ petition was disposed at the admission stage even without giving any notice to the Tappers of Rajarampalli, who have applied for formation of new TCS and the Commissioner of Prohibition and Excise had already sanctioned new toddy shop with separate ration and rental amount by order dated 28.01.2005. Pursuant to the said order of this Court in W.P.No.2603 of 2005 dated 17.02.2005, the Prohibition and Excise Superintendent, Karimnagar submitted remarks on the representation of

TCS-Endapalli dated 30.01.2005 vide letter dated 09.03.2005 stating that Rajarampalli is not a revenue village, it is a hamlet of Endapalli revenue village. TCS-Endapalli is already functioning, which is at a distance of 1½ KMs from the proposed Rajarampalli shop and there is a possibility of blood shed and other problems in case of consideration of new shop at Rajarampalli. It was also stated that the society is already registered on 25.02.2005 but the licence could not be issued. While so, in view of the orders of this Court dated 17.02.2005 directing the Commissioner as well as the Excise Superintendent to consider the representation of TCS-Endapalli dated 30.01.2005 necessary instructions were sought for taking further necessary action. Pursuant to the said letter dated 09.03.2005 the Commissioner of Prohibition and Excise vide his letter dated 20.04.2005 directed the Deputy Commissioner of Prohibition and Excise to enquire into the matter and take a decision at his level.

9. TCS-Rajarampalli made a representation dated 02.09.2005 requesting to issue a licence without any further delay, as the said request was not considered in spite of completing all formalities,

TCS-Rajarampalli filed W.P.No.21300 of 2005 to declare the action of the authorities in not considering its representation dated 02.09.2005 as illegal and arbitrary and to direct them to forthwith issue licence to TCS-Rajarampalli. The said writ petition was disposed of by order dated 30.09.2005 directing the authorities to take appropriate decision on the merits and in accordance with law on the representation of the TCS-Rajarampalli dated 02.09.2005 within a period of four weeks from the date of receipt of a copy of the said order. Thereafter another representation dated 06.10.2005 was also fled by TCS-Rajarampalli before the Commissioner marking copies to Deputy Commissioner and Excise Superintendent enclosing a copy of the order dated 30.09.2005. Thereafter, the Commissioner of Prohibition and Excise vide proceedings in Cr.No.563/2005/CPE/E4 dated 29.12.2005 rejected the proposals for formation of new TCS at Rajarampalli village. The

said order of the Commissioner dated 29.12.2005 was questioned by TCS-Rajarampalli in W.P.No.28159 of 2005 and this Court by order dated 02.01.2006 in W.P.M.P.No.36115 of 2005 made the following order:

> "The petitioner questions the action of the 2nd respondent in issuing the proceedings Cr.No.563/2005/CPE/E4 dated 29.12.2005 rejecting the proposals for formation of new T.C.S. at Rajarampalli village, as if it was not registered, as arbitrary and illegal.
>
> It is stated that the main revenue village is Endapalli wherein separate T.C.S. is functioning. But, on the application of the tappers residing at Rajarampalli village, separate Gram Panchayat within the revenue village of Endapalli, the functional Registrar of the Toddy Tappers Co-operative Society, who is the Superintendent of Prohibition and Excise, accorded permission for formation of Toddy Tappers Co-operative Society on 25.02.2005 and separate ration also has been fixed and the licence for the retail sale of toddy has yet to be given. It is stated that the licence fee has already been paid by the petitioner. It is further stated that when once the Society has been formed, ration has been fixed and shop has been established which has been approved by the Commissioner, Prohibition and Excise, the grant of licence under the A.P. Excise Act, 1968 is automatically to be followed. But the Commissioner of Prohibition and Excise by the impugned order dated 29.12.2005 rejected the proposal for formation of new T.C.S. at Rajarampally village of Velgatur Mandal. It is stated that against the said orders of the functional Registrar of the Toddy Tappers Co-operative Society, an appeal or revision lies to the Deputy Commissioner of Prohibition and Excise. Having satisfied with the relevant A.P. Excise (Arrack and Toddy licences General Conditions) Rules, 1969 and having granted the registration certificate, the Commissioner, who has no delegated powers under the A.P. Co-operative Societies Act, cannot reject the formation of the said Society and the impugned order amounts to setting aside the registration certificate of the Society and the formation of Toddy Tappers Co-operative Society.
>
> Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise.
>
> Having regard to the facts and circumstances of the case, the impugned order dated 29.12.2005 passed by the Commissioner of Prohibition and Excise rejecting the proposals for formation of new T.C.S. at Rajarampalli village is suspended, pending further orders. In view of the same, it is for the licensing authority/Prohibition and Excise Superintendent, Karimnagar to consider the request of the petitioner for grant of excise licence in favour of the petitioner."

10. W.P.No.28159 of 2005 was heard finally and disposed on 18.03.2006

holding that the Superintendent of Prohibition and Excise, is a Functional Registrar so for as the Tappers Co-operative Society is concerned and he is the competent authority under Section 6 of the APCS Act, who already registered TCS-Rajarampalli vide proceedings dated 25.02.2002 and the question that was considered was as to whether the order of the Commissioner rejecting the proposals formation of TCS-Rajarampalli, in spite of the fact that it was already registered by the Prohibition and Excise Superintendent, is sustainable in law. Admittedly, the TCS-Rajrampalli was already registered under 6 of the APCS Act and against the said order only an appeal lies under Section 76 of the APCS Act to the Deputy Commissioner and the Commissioner has not been delegated to exercise any powers under the APCS Act, therefore, the direction to set aside the registration even without issuing notice to TCS-Rajrampalli is illegal. However, as the said order passed, based on the report of MRO without any notice to TCS-Rajarampalli, is not only illegal, arbitrary but also against the principles of natural justice. Accordingly, the order of the Commissioner dated 29.12.2005 was set aside and the writ petition was disposed of directing the Prohibition and Excise Superintendent to consider the objection raised by TCS-Endapalli after affording opportunity to TCS-Rajarampalli to put forth their version and pass appropriate orders in accordance with law within a period of three weeks from the date of receipt of a copy of this said order. It was also made clear that if the objections raised by TCS-Endapalli are found untenable, the Prohibition and Excise Superintendent shall take immediate steps for grant of licence to TCS-Rajarampalli.

11. Pursuant to the said order, the objections of the TCS-Endapalli, was considered stating that Rajarampalli village is at a distance of 1.85 KMs from the Endapalli TCS shop, which is below 2 KMs and Rajarampalli village is still not a revenue village as per the report of MRO, Velgatur Mandal, dated 01.04.2006 and that as per the version of TCS-Endapalli the formation of TCS-Rajrampalli may lead to law and order

problems between their two villages. The objections of TCS-Endapalli have been examined with reference to the excise toddy policy guidelines and as per the report of MRO dated 01.04.2006 stating that Rajarampalli is not a separate revenue village and as per the certificate issued by the Assistant Executive Engineer (R&B) that the distance between Endapalli and Rajarampalli is 1.85 KMs, hence the request of the tappers of Rajarampalli village for issuance of licence for establishment of TCS shop at Rajarampalli cannot be considered. The said order of the Prohibition and Excise Superintendent, Peddapalli in Rc.No217/2006/P&Ex/A3 dated 18.04.2006 is questioned by TCS-Rajarampalli in W.P.No.8663 of 2006.

12. The question that arises for consideration as to whether the TCS-Rajarampalli is entitled for grant of TCS licence at Rajarampalli as per the provisions of the Andhra Pradesh Excise Act, rules made thereunder and the Excise (Toddy) Policy Guidelines.

13. Under the AP Excise Act, selling or buying of excisable articles is prohibited; no person shall sell or buy any intoxicant except under the authority and in accordance with the terms and conditions of the licence granted under Section 15 of the Excise Act. If selling or buying is within the District the Prohibition and Excise Superintendent is the licensing authority. The Government alone has got exclusive privilege of manufacturing, possessing or selling of intoxicating liquors but it can part with the privilege of manufacturing, possession, selling of intoxicant liquors under Section 17 read with Section 23 of the Excise Act. It is not in dispute that the toddy is liquor within the meaning of Section 2(21) of the Excise Act.

14. Government framed rules called Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 (for short 'the Retail Rules') and as per Rule 3 of the Retail Rules the lease of right to sell liquor in retain in case of toddy shops shall be granted by public auction duly notified on payment of a sum under Section 23 read with Section 17 of the Excise Act and the tree tax and tree owner's rent for a period of one year, but provided where the

Commissioner considers it necessary to grant the lease of right to sell liquor in retail, he shall do so with the prior approval of the Government. Under proviso to Rule 3(1) of the Retail Rules only the Government has issued policy guidelines and after the approval of the said guidelines the Commissioner implemented the said policy guidelines. Under Para 2(c) of the policy guidelines on receipt of proposals form the District Collectors, the Commissioner of Prohibition and Excise, shall approve the establishment of Toddy shops as required under Rule-3 of the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969 and the same shall be notified in the District Gazette by the District Collector under Rule-4 of the same rules. In the instant case, pursuant to the application of the tappers of Rajarampalli, the District Collector, Karimnagar had sent proposals and pursuant to the said proposals the Commissioner, Prohibition and Excise accorded sanction for new toddy shop at Rajarampalli and thereafter the same was notified by the District Collector, Karimnagar. TCS-Endapalli has got right to sell toddy at Endapalli village alone as per the toddy shop licence granted to it. It has no right to object the grant of licence in other village other than Endapalli village. Had there been auction of toddy shop at Endapalli and if a new shop has been formed at Rajarampalli, the question of objection for the grant of licence to new shop at Rajarampalli by the auction purchaser of Endapalli does not arise. Therefore, the registration of the society is different from that of grant of licence. Therefore, the only question that arises for consideration as to whether the TCS-Rajarampalli is entitled for grant of licence as per the Excise Toddy Policy Guidelines issued at Para 2(c) read with Paras 5, 6 and 8(a) and 8(b).

The said Paras of the policy guidelines reads as follows:

2. a)……

b)…..

c) On receipt of proposals from the District Collectors, the Commissioner of Prohibition and Excise, shall approve the establishment of Toddy shops as required under Rule-3 of the Andhra Pradesh Excise (Lease of Right to Sell Liquor in Retail) Rules, 1969. The same shall be notified in the District Gazette by the District Collector

under Rule-4 of the same rules.

3. …….

4. …….

5. There shall be no auction of Toddy Shops.
The notified toddy shops vide Para-2 above shall be allotted to TCS or TFT.

6. While notifying the toddy shops and making allotment of trees, preference shall be given to the TCS/TFT functioning the local village, local mandal, local district and neighbouring district in that order. After fulfilling the local requirements, if any surplus trees are available, they can be allotted to neighbouring shops in the same order. In no case allotment of tree shall be made beyond 50 KMs from the topes.

7. a)…….
b)…….
c)…….
d)…….

8. a) As far as possible there shall be only one society for one village and one shop for one society. Splitting and bifurcation of existing Toddy Tappers Cooperative Society groups are permitted whenever warranted as per rules, but not later than 31/12/2004, subject to the guidelines issued by the Commissioner of Proh. & Excise. Applications for grant of new Tappers Cooperative Society/Tree for Tapper shall be filed before 31/12/2004 and the same shall be considered as per existing procedure
b) While sanctioning the establishment of a new shop, preference shall be given to TFT. A minimum distance of 2 KMs to an already existing shop shall be observed while establishing new toddy shop.

15. Under Rule 4(2) of the Retail Rules what is to be notified either for action or for establishment of shop in the auction notice is the name or locality of shop or group of shops which sell liquor in the area. The Commissioner of Prohibition and Excise already accorded sanction for establishment of a shop at Rajarampalli and assigned trees and rental as required under Rule 3(2) of the Retail Rules. The said sanction of the shop, which has been established, was notified by the District Collector under Rule 4(2). In the entire state of AP there is no auction system existing now and all the toddy shops, the TCS/TFT's are only entitled for the lease in their favour instead of auction. It is the case of the TCS-Rajarampalli that it is entitled for the toddy shop licence at Rajarampalli as a shop was already sanctioned for

establishment by the TCS-Rajarampalli and there is no prohibition or obstruction for grant of licence under Para 8(a) and 8(b) of the excise toddy policy guidelines.

16. A perusal of Para 8 goes to show that as far as possible there shall be one society for one village and one shop for one society.

In fact, if there is any group society, the bifurcation is permitted.

In the instant case, the TCS-Endapalli is not a group society but only one toddy shop is there for TCS-Endapalli. It is not a case of bifurcation or splitting in the instant case, but it is a case of formation of new TCS at Rajarampalli. Therefore, the question of bifurcation or splitting does not arise. If there is splitting or bifurcation the question of issuing any notice or considering any objections of TCS-Endapalli does not arise. Therefore, the only further question that arises for consideration as to whether there is any prohibition for grant of toddy shop licence at Rajarampalli on the ground that the distance between Rajarampalli and Endapalli is less than 2 KMs.

17. Para 8(b) of the policy guidelines states that the minimum distance of 2 KMs to an already existing shop shall be observed while establishing new toddy shop. While establishing a new toddy shop the distance of 2 KMs from the existing shop shall be observed. There is no certificate in the instant case stating that Endapalli toddy shop is less than 2 KMs distance from the newly proposed Rajarampalli toddy shop; but the certificate issued by the Assistant Executive Engineer,

R & B Department, which was referred and filed by both the petitioners, reads as follows:

"DISTANCE CERTIFICATE

This is to certify that the distance between Endapalli village to Rajarampalli village is 1.850 KMs (one kilometer and eight hundred and fifty meters only). This is for the purpose of Gowda Association only.

Sd/-
13.04.2006
Assistant Executive Engineer
(R&B) Section, Dharmaram."

According to the aforesaid certificate the distance between Endapalli Village and Rajarampalli Village is 1.850 KMs but it is not stated as to what is the distance between the existing Endapalli Toddy shop and the proposed Rajarampalli Toddy shop. There is no stipulation about the distance between one village to another but what is specified is that a minimum distance of 2 KMs shall be observed to an already existing shop while establishing a new shop. Therefore, there is no prohibition for grant of licence to the TCS-Rajarampalli if it is 2 KMs away from the existing toddy shop of TCS-Endapalli.

Therefore, it cannot be said that the sanction of new toddy shop at Rajarampalli is contrary to Para 8(b). However, the further question that arises for consideration, as to whether the distance between

the existing toddy shop of TCS-Endapalli to the newly proposed shop Rajarampalli by the TCS-Rajarampalli is 2 KMs or above.

18. The impugned order dated 18.04.2006 passed by the Prohibition and Excise Superintendent, Peddapally was suspended while admitting the writ petition by order dated 27.04.2006 in WPMP.No.11049 of 2006. Though the said order was suspended no licence has been granted so far to TCS-Rajarampalli. Thereafter, the TCS-Rajarampalli filed WPMP.No.19629 of 2006 seeking direction to grant licence but this Court by order dated 09.11.206 held that unless the impugned order dated 18.04.2006 is set aside a direction for grant of licence cannot be granted. Pursuant to the proceedings of the Commissioner, Prohibition and Excise vide proceedings in Cr.No.563/05/CPE/E4 dated 21.03.2007 the matter was again enquired into by the Revenue Divisional Officer, Peddapally and submitted his report vide letter No.C/1132/07 dated 10.05.2007 ad on the said report the Collector and District Magistrate, Karimnagar addressed a letter Rc.No.217/2005/P&E/A3 dated 13.06.2007 to the Commissioner of Prohibition and Excise, as under:

"1. The Tappers TCS Rajarampalli village of Velgatur Mandal have filed W.P.No.8663 of 2006 before the Hon'ble High Court, which s under trial.

2. As per the report of the RDO Peddapalli, Rajarampalli is not Revenue Village, it is H/o Endapalli Revenue Village. The distance between two Toddy Shops of TCS Endapalli i.e Manduva near Yellamma Gudi and proposed Toddy Shop TCS Rajarampalli is 3 KMs and 400 meters. In Endapalli Revenue Village there are two grampanchayats namely Endapalli and Rajarampalli.

3. The Government has issued orders co-terminating Revenue Village and Gram Panchayat. In the circumstances stated above the TCS Rajarampalli is at a distance of above 2 KMS. As the case is pending in the High court decision may be taken on the disposal of the case."

19. Under the excise toddy policy guidelines, there is no prohibition for establishment of a toddy shop in Rajarampalli village even it is a hamlet of Endapalli revenue village as admittedly the Rajarampalli is a separate gram panchayat and Endapalli is also a separate gram panchayat. Therefore, the distance limit has to be considered with reference to the existing toddy shop to the newly proposed toddy shop but not between the two villages. As already stated it is not the case of splitting or bifurcation of TCS-Endapalli but it is the case of establishment of new toddy shop at separate gram panchayat from that of Endapalli. Therefore, there cannot be any objection for grant of licence in respect of already formed TCS-Rajarampalli for which a new toddy shop was already sanctioned and established by the Commissioner and notified by the District Collector in the District Gazette. However, the rejection order based on the certificate of the Assistant Executive Engineer, R&B is illegal and contrary to Para 8(b) of the excise toddy policy guidelines. As per the report letter of the District Collector, the distance between the existing toddy shop of TCS-Endapalli and proposed toddy shop of TCS-Rajarampalli is 3 KMs and 400 meters, which is well beyond 2 KMs, therefore, there cannot be any objection for grant of licence to TCS-Rajarampalli.

20. Insofar as the contention of the learned counsel for TCS-Endapalli, in not disposing the objections filed on behalf of TCS-

Endapalli in opposing to constitute a separate TCS at Rajarampalli and granting licence to Rajarampalli, is concerned as already stated it is not the case of splitting or bifurcation and the question of giving any reasonable opportunity or considering the objections does not arise. However, the representation of TCS-Endapalli was considered regarding the distance between Endapalli village and Rajarampalli village based on the certificate of Assistant Executive Engineer, R&B and the Prohibition and Excise Superintendent erroneously rejected the issuance of licence in favour of TCS-Rajarampalli contrary to Para 8(a) and (b) of the Excise Toddy Policy Guidelines. Therefore, it cannot be said that there was any violation of principles of natural justice either in the formation of TCS or proceeding to grant licence in favour of TCS-Rajarampalli.

21. It is also pertinent to note that TCS-Endapalli never questioned the sanctioned order for establishment of new toddy shop at Rajarampalli with separate ration and rental. Neither the ration nor the rental of TCS-Endapalli has been affected in granting licence for a new toddy shop vide proceedings of the Commissioner of Prohibition and Excise in Rc.No.563/05/CPE/E4 dated 28.01.2005 and the said order was never questioned by the TCS-Endapalli. However, TCS-Endapalli cannot question the said establishment of toddy shop, which has been made in accordance with Rule 3(2) of the Retail Rules and notified by the District Collector under Rule 4 of the Retail Rules. As per Para 8(a) the Excise officers shall take endure to form a separate society for each village by granting toddy shop licences as far as possible.

Even if there is group TCS, it shall be split within the same village.

The village means not necessarily a revenue village and a gram panchayat is also a separate village. Therefore, merely because Rajarampalli is hamlet of Endapalli village, it cannot be said that there is a legal objection either for the formation of a society or for the establishment of a new toddy shop at Rajarampalli, which is a separate village.

22. Having regard to the facts and circumstances of the case and for the aforesaid reasons, the order of the Prohibition and Excise Superintendent, Peddapally in Rc.No.217/2006/P&Ex./A3 dated 18.04.2006 is set aside and the second respondent/licensing authority is directed to issue licence at a place situated 2 KMs away from the existing licenced toddy shop of TCS-Endapalli for the newly sanctioned toddy of Rajarampalli village in favour of TCS-Rajarampalli in accordance with the rules within two weeks from the date of receipt of a copy of a copy of this order.

W.P.No.8663 of 2006 is accordingly allowed and W.P.No.15124 of 2007 is accordingly dismissed with costs.

V. ESWARAIAH, J

August 7th, 2007
Note: LR Copy to be marked
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